A

JOHN ANDREW MALTHOUSE

v.

CYRIL STEVEN & ORS

B HIGH COURT SABAH & SARAWAK, KOTA KINABALU
RAVINTHRAN PARAMAGURU J
[CIVIL CASE NO: K22-31-1999]
8 APRIL 2014

C ***CIVIL PROCEDURE:*** *Damages - Assessment of damages - Plaintiff shot in head by auxiliary policeman - Survived but suffered serious brain injury - Damages assessed by Deputy Registrar - Award of general damages - Whether excessive - Whether consistent with awards in other cases*

D In 1996, the vehicle which the plaintiff was driving was stopped by an auxiliary policeman ('the first defendant') who asked for a lift. The plaintiff obliged and when the plaintiff later stopped the vehicle for the first defendant to alight, the latter shot the former
E twice on the left side of his head at close range. The plaintiff survived but suffered serious brain injury. The first defendant was charged under s. 338 of the Penal Code for causing grievous hurt to the plaintiff. Judgment in default was entered against the first defendant as he pleaded guilty and did not contest the case
F against him. In 2001, the Deputy Registrar entered judgment against the second and the third defendants, the employers of the first defendant, with damages to be assessed pursuant to an unless order made by the High Court Judge. Appeals by the second and third defendants to the Judge in Chambers and Court of Appeal,
G proved futile. The Deputy Registrar awarded to the plaintiff (i) general damages for pain and suffering and loss of amenities in the sum of RM500,000 with interest of 8% per annum; (ii) general damages for future medical expenses in the sum of RM60,000 with interest of 8% per annum; (iii) RM106,800 and £46,400 with
H interests of 8% interests per annum, being the pre-trial and post-trial costs of nursing care of the plaintiff, respectively; and (iv) RM250,000 as exemplary damages with interest of 8% interest per annum. Two appeals arose from the Deputy Registrar's decision. In the first appeal, the plaintiff complained against the
I amount awarded for post-trial nursing care and appealed against the Deputy Registrar's dismissal of his claims for loss of earning capacity and special damages. In the second appeal, the second

and third defendants appealed against (i) the award of RM500,000 for pain and suffering and its interest of 8% per annum; and (ii) pre-trial cost of nursing care and its statutory interest of 8% per annum.

Held (order accordingly):

(1) The interest issue was a non-issue as the judgment of the High Court in 2001 was affirmed by the Court of Appeal. In the said judgment, the court ordered interest at 8% per annum on general damages from the service of writ until full payment. In the Deputy Registrar's judgment, interests of 8% per annum was granted from date of service of the writ to the date of judgment. He also granted statutory interest from the date of judgment to date of payment. However, he did not order two set of interests at 8% per annum to run simultaneously. The order of the Deputy Registrar in respect of interest was consonant with the judgment of the High Court which was the basis of the assessment hearing. (para 9)

(2) Although the Senior Federal Counsel was of the view that precedents circa 2001 should have been used by the Deputy Registrar, he was agreeable to a global award of RM300,000 for pain and suffering and loss of amenities. Any drop in monetary value would have been compensated by the 8% interest per annum. Even though the plaintiff had led an active life and his present condition would be distressing to him, awards for general damages have to be based on award in previous cases involving similar injuries. In the premises, a global award is more appropriate than separate awards. The sum of RM300,000 was reasonable. (para 21)

(3) The Deputy Registrar gave no reason for awarding RM250,000 as exemplary damages. The sum of RM250,000 was unjustified as the plaintiff had already been awarded RM300,000 for pain and suffering and loss of amenities. The award for exemplary damages from RM250,000 to RM100,000 and the award shall bear post-judgment interest of 5% from 28 February 2013. (para 24)

(4) The plaintiff had tendered evidence in the form of a printout from the Central Intelligence Agency of the United States ('CIA') website which stated that the life expectancy of a United Kingdom male was 79 years old. The court could not take judicial notice of the said printout. The plaintiff should have given evidence through medical witnesses who had testified on his behalf. (para 28)

(5) The plaintiff, a United Kingdom citizen would be returning to Scotland and the cost of hiring a trained caregiver would be at least £800 per week. £800 per week was unjustified as the plaintiff, despite sustaining serious injuries had not been reduced to 'vegetative state' or even a wheelchair existence. He had still managed to work after the incident with the assistance of his wife for few years. The plaintiff had elected to live and work in Malaysia at the material time. Therefore, any award, including an award for costs of nursing care, should be based on local rates. (para 36)

(6) In respect of cost of future nursing costs, the plaintiff was awarded with RM86,400 with post judgment interest of 5% per annum from 28 February 2013. This is based on the multiplier of 12 years and the multiplicand of RM600 per month. However, the future nursing care award should not carry interest from the date of service because nursing care costs that would be incurred in the future were claimable immediately. The decision of the Deputy Registrar in respect of future cost of nursing care was therefore varied. (para 37)

(7) The court had granted special damages in the sum of RM149,423.35. However, during the assessment hearing, the plaintiff claimed a further RM14,311.66 which were medical expenses that were incurred later. The receipts were produced by the plaintiff to support these expenses. However, the Deputy Registrar did not make any award under this head of special damages as it was deemed to have been 'settled'. The plaintiff's appeal against the decision of the Deputy Registrar in not granting the further special damages of RM14,311.66 was dismissed. It is trite law that special damages must be particularised and pleaded. Assessment of damages was only ordered in respect of general damages. (para 38)

Case(s) referred to:

Ahmad Daman Huri Hussein v. Koo Chin Yau [1990] 1 CLJ 747; [1990] 1 CLJ (Rep) 568 HC ***(refd)***

Bujang Mat & Anor v. Lai Tzen Hai & Anor [2004] 4 CLJ 127 HC ***(refd)***

Cheng Siak Hor & Anor v. Rozali Ahmad [2002] 4 CLJ 223 HC ***(refd)***

Chong Nyan Lai v. Abdul Ghani Othman [2010] 1 PIR [11] ***(refd)***

Chong Siew Chiang v. Chua Ching Geh & Anor [1995] 1 CLJ 173 HC ***(refd)***

Cunningham v. Harrison [1973] 1 QB 942 ***(refd)***

Dass Darmalingam v. Mohd Fauzi Mohd Salleh & Another [2011] 1 PIR [46] ***(refd)***

Dr Yusuff Mansur v. Changkat Jering Sdn Bhd & Anor [1997] 3 CLJ Supp 211 HC ***(refd)***

Inderjeet Singh Piara Singh v. Mazlan Jasman & Ors [1995] 3 CLJ 395 HC ***(refd)***

Kassim Ibrahim & Anor v. Syed Khodri Syed Abdul Aziz [2009] 2 PIR [25] ***(refd)***

Liong Thoo v. Sawiyah Hj Sirat & Ors [1981] CLJ 126; [1981] CLJ (Rep) 171 HC ***(refd)***

M Kumaresan Muniandy v. Gan Yew Peng [2011] 2 PIR [3] ***(refd)***

Marappan Nallan Koundar & Anor v. Siti Rahmah Ibrahim [1990] 1 CLJ 32; [1990] 1 CLJ (Rep) 174 SC ***(refd)***

Mohd Amiruddin Kamurudin & Another v. Fazilah Abdul & Another [2008] 1 PIR [35] ***(refd)***

Mohd Azri Embong & Anor v. Wakil-wakil Kediri Abdul Razol Arifin, Si mati [2008] 2 PIR [33] ***(refd)***

Muhamad Ayub Zulkifli v. Zolazree Zolkeflee & Anor [2011] 1 LNS 1428 HC ***(refd)***

Ong Ah Long v. Dr S Underwood [1983] 2 CLJ 198; [1983] CLJ (Rep) 300 FC ***(refd)***

Rookes v. Barnard [1964] AC 1129 ***(refd)***

Sam Wan Hoon v. Kader Ibramsah [1981] 1 MLJ 295 ***(refd)***

Sin Heap Lee-Marubeni Sdn Bhd v. Yip Shou Shan [2004] 4 CLJ 35 CA ***(refd)***

Syarizan Sudirmin & Ors v. Abdul Rahman Bukit & Anor [2010] 3 CLJ 877 HC ***(refd)***

Tan Yaw Soon & Anor v. Teng Sian Loong Enterprise Sdn Bhd [1994] 2 CLJ 301 HC ***(refd)***

Templeton & Ors v. Low Yat Holdings Sdn Bhd & Anor [1992] 1 LNS 7 HC ***(refd)***

Wong Li Fatt William (an infant) v. Haidawati Bolhen & Anor [1994] 1 LNS 196 HC ***(refd)***

Zulsafari Ab Ghani & Another v. Shahril Idris [2002] 3 CLJ 187 HC ***(refd)***

Legislation referred to:

Civil Law Act 1956, s. 28

Penal Code, s. 388

For the plaintiff - Mary Lee; M/s Lee & Kong, Advocs
For the defendants - Rahazlan Affendi; State Legal Officer, Sabah

Reported by Najib Tamby

JUDGMENT

Ravinthran Paramaguru J:

Introduction

[1] There are two appeals from the decision of the Deputy Registrar in Chambers pending before me. The first appeal is by the plaintiff and the second appeal is by the second and third defendants. The decision of the Deputy Registrar was in respect of assessment of damages. The brief facts relating to the belated assessment hearing may be stated as follows. In 1996, the plaintiff, an expatriate from the United Kingdom, was working in Kota Kinabalu as a Yacht Maintenance Specialist cum Marina Manager. The first defendant was an auxiliary policeman in the employ of the second and third defendants. On 26 February 1996, in the late evening, the first defendant stopped the vehicle of the plaintiff and asked for a lift. The plaintiff obliged. However, sometime later when the plaintiff stopped his vehicle for the first defendant to alight, the first defendant shot the plaintiff twice on the left side of his head at close range. A third shot hit the roof of the vehicle. The plaintiff survived but suffered serious brain injury. The first defendant was charged with causing grievous hurt under s. 338 of the Penal Code. He pleaded guilty and was sentenced to imprisonment. The first defendant's reason for shooting the plaintiff is unclear and remains a mystery although he claimed in the criminal court that the plaintiff wanted to snatch his bag. On 8 March 2001, the Deputy Registrar entered judgment against the second and third defendants with damages to be assessed pursuant to an unless order made by the High Court Judge. This judgment was appealed against by the second and third defendants to the Judge in Chambers. It was dismissed. The appeal to the Court of Appeal was dismissed on 19 January 2011. As for the first defendant, he did not contest the case against him and judgment in default was entered against him. The trial of the assessment of damages commenced on 23 January 2008 before the Deputy Registrar. It only concluded on 10 December 2010.

The plaintiff called eight witnesses including five specialist doctors to testify as to his medical condition. The Deputy Registrar delivered his decision on damages on 28 February 2013. The instant appeal is from this decision.

Preliminary Issues

[2] The assessment hearing in question was conducted pursuant to the judgment dated 8 March 2001. The Court of Appeal had affirmed this judgment as the appeal of the second and third defendants was dismissed. Before me, the second and third defendants disputed the interest rate applicable to the general damages that were assessed.

[3] This issue can be answered by reference to the High Court order dated 8 March 2001. The other issue that can be answered by reference to the said order is the issue of special damages. The plaintiff had applied for special damages in the assessment hearing before the Deputy Registrar and this application was disputed by the second and third defendants. Therefore, for ease of reference, I shall set out below the order dated 8 March 2001:

> PURSUANT to the Order of this Honourable Court dated 08.03.2001 IT IS THIS DAY ADJUDGED that the 2nd and 3rd Defendants do jointly and severally pay the Plaintiff:
>
> (1) General damages under paragraph 12 of the Amended Statement of Claim to be assessed;
>
> (2) Special damages under paragraph 12 of the Amended Statement of Claim;
>
> (3) Interest on the General Damages in prayer (1) above at the rate of 8% per annum from the date of service of Writ to 08.03.2001 under Section 11 of the Civil Law Act 1956;
>
> (4) Interest on the Special Damages in prayer (2) above at the rate of 8% per annum from the date of the shooting, that is, 26.02.1996 to 08.03.2001 under Section 11 of the Civil Law Act 1956;
>
> (5) Exemplary and/or aggravated damages to be assessed on the facts and matters stated in paragraph 13 of the Amended Statement of Claim;

A (6) Statutory interest on the Judgment sum awarded as damages at the rate of 8% per annum from 08.03.2001 to the date of full payment; and

(7) Costs.

B **[4]** I shall address the interest issue and the claim for special damages in the later part of this judgment.

Claim Of The Plaintiff At The Assessment Hearing

C **[5]** Before the Deputy Registrar, the plaintiff claimed damages under the following heads:

(i) General damages for pain and suffering and loss of amenities of life;

D (ii) General damages for costs of future medical expenses;

(iii) General damages for loss of earning capacity;

(iv) General damages for cost of continual care and supervision of plaintiff;

E

(v) Special damages totalling RM14,311.66 from date of filing of writ to the date of trial; and

(vi) Assessment of exemplary and/or aggravated damages.

F **Decision Of Deputy Registrar**

[6] Under item (i), ie, general damages for pain and suffering and loss of amenities, the Deputy Registrar awarded RM500,000 with interests at the rate of 8% per annum from the date of service of
G the writ to 8 March 2001. He also awarded interest of 8% per annum from 8 March 2001 to date of payment. Under item (ii), ie, general damages for future medical expenses, he awarded RM60,000 at the rate of 8% per annum from the date of service of the writ to 8 March 2001. He awarded statutory interest 8%
H per annum from 8 March 2001 to date of payment. There was no appeal by either party against this award. Under item (iii), ie, general damages for loss of earning capacity, the Deputy Registrar made no award. The plaintiff appealed against this award in the notice of appeal to judge in chambers. However, in the
I written submissions of counsel for the plaintiff, the appeal against the decision of the Deputy Registrar not to make any award for

loss of earning capacity was abandoned. Item (iv) is in respect of pre-trial and post-trial nursing care of the plaintiff. For pre-trial cost of nursing care, the Deputy Registrar awarded RM106,800, at the rate of 8% per annum from the date of service of the writ to 8 March 2001. He also awarded statutory interest 8% per annum from 8 March 2001 to date of payment. For post-trial cost of nursing care, the Deputy Registrar awarded £46,400 at the rate of 8% per annum from January 2001 to the date of full payment. Under item (v), ie, special damages totalling RM14,311.66 which were incurred between the date of the judgment dated 8 March 2001 and the date of the assessment of damages, the Deputy Registrar did not make any award. Under item (vi), ie, for exemplary and aggravated damages, the Deputy Registrar granted RM250,000 as exemplary damages at the rate of 8% per annum from the date of service of the writ to 8 March 2001. He awarded statutory interest 8% per annum from 8 March 2001 to date of payment. However, he did not make any award for aggravated damages.

Appeal Of The Plaintiff

[7] The plaintiff appealed against the decision of the Deputy Registrar in the notice of appeal to Judge in Chambers dated 14 March 2013 in respect of the part of his decision that addressed the following matters:

(1) the dismissal of the claim for loss of earning capacity. This appeal was abandoned at the submission stage and therefore shall not be considered in this judgment.

(2) the award of only £46,400 for future nursing care. Counsel for the plaintiff had submitted a claim for RM3,501,913.

(3) the dismissal of claim for special damages.

Appeal Of The Second And Third Defendants

[8] The second and third defendants appealed against the following awards:

(i) the award RM500,000 for pain and suffering.

(ii) the interest on RM500,000 at the rate of 8% per annum from 8 March 2001 to date of payment.

(iii) pre-trial cost of nursing care of RM106,800 at the rate of 8% per annum from the date of service of the writ to 8 March 2001.

(iv) statutory interest on RM106,800 at 8% per annum from 8 March 2001 to date of payment.

Interest And Decrease In Money Value

[9] I shall first address the issue of interests as the learned Senior Federal Counsel appeared to suggest in his submission that interest on damages from 8 March 2001 would lead to unjust enrichment. Another argument of the Senior Federal Counsel that is related to this issue is that the Deputy Registrar should have considered the fact that the recent authorities that were cited to him had taken into account inflation and that appropriate adjustment in money value were made by the courts in those cases. This issue has arisen because the instant suit was filed in 1999 but for various reasons the assessment hearing was only concluded in 2013. In my opinion, the interest issue is a non issue for the reason that the judgment of the High Court dated 8 March 2001 was affirmed by the Court of Appeal. In the said judgment, the court ordered interest at 8% per annum on general damages from the service of the writ until full payment. In the Deputy Registrar's judgment at the conclusion of the assessment hearing on 28 February 2013, interests of 8% per annum was granted from date of service of the writ to date of judgment ie, 8 March 2001. He also granted statutory interest from 8 March 2001 to date of payment. However, he did not order two set of interests at 8% per annum to run simultaneously. In the premises, the order of the Deputy Registrar in respect of interest in his judgment dated 28 February 2013 is consonant with the judgment of the High Court dated 8 March 2001 which is the basis of the assessment hearing.

[10] The related argument of the Senior Federal Counsel is that the Deputy Registrar had taken into account recent cases that awarded higher damages compared to cases decided in 2001. He submitted that this was not necessary as interest rate of 8% per annum from the date of service of the writ until full payment had been provided in the judgment of the High Court dated 8 March 2001. In my view, there is merit in this point although the use of comparables in awarding damages is not an exact science. The

learned Deputy Registrar should have borne in mind that recent comparables had made adjustment for drop in money value. I shall address this point when considering the award for pain and suffering.

Award For Pain And Suffering And Loss Of Amenities

[11] The Deputy Registrar awarded RM500,000 under this head of damages. Only the defendants have appealed against this award. Counsel for the plaintiff and the Senior Federal Counsel have generally not quarrelled over the principles applicable in assessing damages under this head. In *Ong Ah Long v. Dr S Underwood* [1983]2 CLJ 198; [1983] CLJ (Rep) 300; [1983] 2 MLJ 324, Syed Agil Barakbah FJ said at p. 314 (CLJ); p. 334 (MLJ):

> It has to be borne in mind that damages for personal injuries are not punitive and still less a reward. They are simply compensation that will give the injured party reparation for the wrongful act and for all the natural and direct consequences of the wrongful act, so far as money can compensate (see *British Transport Commission v. Gourley* [1956] AC 185 at p. 206 and *H West & Son Ltd v. Shephard* [1963] 2 All ER 625). The award under general damages should be a global sum commensurate with the injury sustained and not a full compensation which might result in ruinous consequences to the defendant.

[12] In the instant case, the plaintiff is not only claiming for pain and suffering but also for loss of amenities. The plaintiff was shot twice in the head by the first defendant. The plaintiff called five medical specialists to testify on the extent of his injuries and the permanent disabilities that he suffers as a result of the callous act of the first defendant. As can be imagined, the plaintiff experienced horrible pain and anxiety in the immediate aftermath of the shooting. After the shooting, only superficial suturing was done on his head to deal with gunshot injuries. As the plaintiff was conscious he suffered acutely and was distressed at the possibility of lapsing into a vegetative state. As nothing more could be done for him at the Kota Kinabalu Hospital, he was medically evacuated to Singapore when he underwent immediate brain surgery. The gunshot entry wounds had fractured the left side of his skull besides causing brain tissue injury. Therefore part of his left skull was removed and stitched with skin covering. Only about six months later, another surgery was performed to implant a plastic covering. However, some bullet fragments are still lodged to this

day in his brain as it is too risky to attempt any removal by surgical operation. The major permanent disabilities that the plaintiff now suffers are visual field loss and organic personality disorder. He suffered brain scarring as well and is at risk from developing brain abscess and seizures. The evidence of the five medical specialists in respect of the treatment administered to the plaintiff and the permanent disabilities caused by the brain injury are lengthy. Learned counsel for the plaintiff summarised their evidence and the evidence of the other witnesses in respect of the lifestyle changes that the plaintiff had to endure as follows:

(1) The Plaintiff was 45 years and 4 months old at the time of the shooting and in the prime of his life professionally, socially and personally. The Plaintiff sustained severe and extensive fracture to his skull on the left side of his head.

(2) He suffered severe compound, extensive and irreversible brain injuries to the left (dominant) parietal lobe of his brain.

(3) His brain was contused and swollen and he was in severe pain and writhing in agony.

(4) He was hospitalized for about 1 month from 16.02.1996 to 15.03.1996.

(5) He underwent craniotomy surgical operation and debridement for gun shot wounds to the left side of his head on 29-02-1996 lasting 6 Y2 hours.

(6) Two large and several small bullet fragments embedded deep in the Plaintiff's brain could not be removed surgically and effect of the remaining residual bullet fragments on his prognosis is uncertain.

(7) The Plaintiff was left without the left side of his skull for 6 months with only the skin stitched over his open skull to allow the swelling in his brain to subside.

(8) He was hospitalized for 10 days in August 1996 and underwent a left cranioplasty operation lasting 3 Y2 hours to fit and secure a plastic plate to replace that part of the skull that had been damages by the gunshots.

(9) He suffered resulting organic personality disorder and associated personality changes which is continuing.

(10) He suffered severe permanent and irreversible disabilities and intellectual impairment including greatly impaired ability for speech, reading, writing and calculation.

(11) He suffered severe and permanent impairment, curtailment and loss of basic life and social skills, daily frustration and embarrassment.

(12) He suffered extensive right sided visual field loss in both eyes due to permanent damage to his left optic tract.

(13) He suffered irreparable hearing impairment/deafness in both ears.

(14) He suffered extensive, progressive and irreversible gliosis/scarring of brain tissue.

(15) He suffered impending risk of developing brain abscess, seizures/fits due to residual copper jacket lead bullet fragments remaining in his brain which contained copper, a reactive metal.

(16) He suffered loss of ability do to the job/profession he was trained and qualified for and enjoyed doing.

(17) He lost the ability to resume his previous employment and profit sharing joint venture business for which he was trained and qualified.

(18) He lost the ability to resume particular hobbies and sports he enjoyed including reading, diving, participating in international sailing regattas.

(19) He suffered severe loss of enjoyment of life and deprivation of pleasures of ordinary life experiences.

(20) He is fully aware and conscious all this while since the gunshot wounds of his disabilities, loss of opportunities and unfavourable prognosis which has increased his pain and suffering.

(21) He is constantly dependant on others and has to be supervised, guided and assisted in his daily activities which are demoralizing, demeaning and frustrating for him.

[13] After taking into account, the depreciation in money value since the time of the incident, she submitted before the Deputy Registrar that an award of RM1.2 million is fair and reasonable for pain and suffering. However, as I said earlier, the plaintiff did not

appeal against the award of RM500,000 for pain and suffering and loss of amenities. Counsel for plaintiff identified three major components of the plaintiff's pain and suffering and loss of amenities as a result of the shooting incident. They are:

(1) Traumatic, severe and extensive brain injury. She submitted that RM594,000 is reasonable.

(2) Permanent right sided visual field loss in both eyes. She submitted that RM216,000 is reasonable.

(3) Organic personality disorder. She submitted that RM274,000 is reasonable.

[14] My view on learned counsel for the plaintiff's submission is as follows. Firstly, I do not think it is appropriate to take into account the drop in money value between 2001 and 2013 as in the judgment dated 8 March 2001, interests at the rate of 8% per annum from the date of service of the writ to 8 March 2001 and until full payment had been provided. The depreciation in the Malaysian Ringgit or inflation would have been roughly compensated by the 8% per annum interest rate. Secondly, the issue at hand is not whether RM1.2 million damages for pain and suffering is more appropriate. This is because the plaintiff did not appeal against the award of RM500,000 granted by the Deputy Registrar for pain and suffering. I have already ruled that the belated supplementary notice of appeal against this award is not valid. Thus, there is no appeal by the plaintiff against the award of RM500,000. Although, an appeal from the decision of the Deputy Registrar is a rehearing, the court should not be concerned with matters that are not the subject of an appeal. In *Tan Yaw Soon & Anor v. Teng Sian Loong Enterprise Sdn Bhd* [1994] 2 CLJ 301; [1994] 1 MLJ 239 that was cited by the Senior Federal Counsel, the court said as follows:

> Since there is no counter appeal by the plaintiffs over their application under O. 18, this appeal before me will proceed only against the decision of the SAR in making the order pursuant to O. 81 of the RHC. The notice of appeal by the defendant confines only to the order made by the SAR. Though an appeal under O. 56 r. 1 of the RHC is by way of rehearing, the appellate court is not to be concerned with any matter not appealed against.

[15] In respect of the appeal by the defendants, the learned Senior Federal Counsel has submitted RM500,000 was on the high side because the learned Deputy Registrar considered more recent precedents circa 2010. He submitted that the quantum of assessment should have been made based between the date of service of the writ and the date of judgment only, ie, 8 March 2001.

[16] The cases cited by counsel for the plaintiff are as follows:

1. *Wong Li Fatt William (an infant) v. Haidawati Bolhen & Anor* [1994] 1 LNS 196; [1994] 2 MLJ 497. The three year old plaintiff suffered severe brain damage and epilepsy secondary to the head injury. He was rendered dependent on others for his basic needs for the rest of his life. He could feel pain but was unaware of his condition or that he was suffering. His life-span was also shortened as a result of his injuries. The court awarded RM190,000 for pain and suffering and loss of amenities.

2. *Inderjeet Singh Piara Singh v. Mazlan Jasman & Ors* [1995] 3 CLJ 395; [1995] 2 MLJ 646. The plaintiff suffered brain injury, partial quadriplegia and fractures to limbs. He was mostly confined to a wheelchair and required full time supervision. The court awarded RM244,000 as general damages for pain, suffering and loss of amenities.

3. *Dr Yusuff Mansur v Changkat Jering Sdn Bhd & Anor* [1997] 3 CLJ (Supp) 211; [1997] 5 MLJ 530. As a result of the accident, the plaintiff suffered mental illness known as 'manic depressive psychosis'. The plaintiff suffered loss of intellectual and cognitive functioning and he showed impairment in reasoning logical thinking and an impaired ability to plan and organise tasks. The High Court awarded RM110,000 for the brain injury. The court noted that as the plaintiff was a "conscious sufferer", his condition would be particularly distressing to him.

4. In *Bujang bin Mat & Anor v. Lai Tzen Hai & Anor* [2004] 4 CLJ 127; [2004] 6 MLJ 376, the plaintiff suffered severe head injuries which reduced him to a "vegetative state". The award of RM200,000 by the Sessions Court was not disturbed by the High Court.

5. In *Mohd Azri b Embong & Anor v. Wakil-wakil Kediri Abdul Razol b Arifin, Si mati* [2008] 2 PIR [33], the Sessions Court awarded RM200,000 for severe brain injury which resulted in visual field reduction, double vision, irreversible damage to the optic nerve, memory impairment, personality change and inability to pursue normal lifestyle.

6. In *Kassim b Ibrahim & Anor v. Syed Khodri b Syed Abdul Aziz* [2009] 2 [25], the Sessions Court awarded RM350,000 for severe head injury which resulted in large subdural haemorrhage, right frontal contusion that caused seizures, cognitive deficits, and deformity as the bone flap was removed.

7. In *Chong Nyan Lai v. Abdul Ghani b Othman* [2010] 1 PIR [11], the Sessions Court awarded RM300,000 for severe head injuries that resulted in neurological disabilities and persistent vegetative state.

8. In *Syarizan Sudirmin & Ors v. Abdul Rahman Bukit & Anor* [2010] 3 CLJ 877 the High Court awarded the 15 year old plaintiff RM300,000 for head injury that resulted in paraplegia.

9. In *Kalaiarasan a/l T Sukumaran v. Khor Lye Choon* [2011] 2 PIR [6], the Sessions Court awarded RM350,000 to the plaintiff for severe head injuries (very severe cerebral concussion) (diffuse brain injury) intracelebral haemorrhage, cerebral oedema brain damage resulting in permanent dysorthria and some impairment of mental functions, permanent weakness of the right side due to right hemiparesis and inability to stand and walk independently.

[17] Learned Senior Federal Counsel did not dispute that the plaintiff suffered serious brain injury and is now afflicted with loss of amenities. However, he cited cases where a lesser award had been made for more serious injuries in the case of "conscious sufferers" such as the plaintiff in the instant case. Some of these cases were also cited by counsel for the plaintiff.

1. In *Marappan Nallan Kaundar & Anor v. Siti Rahmah bte Ibrahim* [1990] 1 CLJ 32; [1990] 1 CLJ (Rep) 174; [1990] 1 MLJ 99, the plaintiff suffered severe head injuries with contusion of the brain and fracture of the right fronto-parietal bone of the skull which caused complete paralysis of her limbs. The judgment

did not indicate that the plaintiff in that case was reduced to a "vegetative state". The plaintiff was awarded RM180,000 for pain and suffering and loss of amenities.

2. The learned Senior Federal Counsel pointed out that in *Wong Li Fatt William (an infant) v. Haidawati bte Bolhen & Anor (supra)* which was also cited by counsel for the plaintiff, the accident victim could feel pain though he was in "vegetative state" but the court awarded only RM190,000 in 1994.

3. Finally, the Senior Federal Counsel submitted *Syarizan Sudirmin & Ors v. Abdul Rahman Bukit & Anor (supra)* is the precedent that is closest to the instant case. In that case, the victim who was deliberately kicked off from his motorcycle by a policeman was rendered a paraplegic and suffered multiple loss of amenities. He was also a conscious sufferer. His sufferings were summarised by VT Singham J as follows:

    1. He was hospitalized for the total period of 5 1/2 years.

    2. There is no hope that his paraplegia conditions will improve.

    3. He has undergone various operations and treatment and he had to endure extensive and prolonged misery of agony.

    4. He has no control of bladder or bowels.

    5. There have to be mechanical evacuation of faeces and is done approximately three times a day. There has to be evacuation of urine by catheter.

    6. His brain and intelligence are unimpaired.

    7. He has to be moved frequently to avoid body sores if he is too long in one position.

    8. He suffers a great amount of discomfort.

    9. He has lost almost all the amenities.

    10. He has lost the chances of employment and of the pleasures and excitements that add to the brightness of life.

    11. His life is one of constant discomfort and constant expense. (see *Morey v. Woodfiled* [1963] 3 All ER 533)

    12. He will get complications like pressure sore and urinary tract infections from time to time.

[18] For pain and suffering and loss of amenities occasioned by his paraplegic condition, the plaintiff was awarded only RM300,000 in 2010.

[19] Although RM300,000 was awarded in *Syarizan Sudirmin & Ors v. Abdul Rahman Bukit & Anor (supra)*, it must be noted that circa 2010, awards by most courts for paraplegia was only in the region of RM200,000. The said cases are as follows:

(a) In *M Kumaresan a/l Muniandy v. Gan Yew Peng* [2011] 2 PIR 35, RM150,000 was awarded for paraplegia below the umbilicus.

(b) In *Dass a/l Darmalingam v. Mohd Fauzi b Mohd Salleh & Another* [2011] 1 PIR 46, RM200,000 was awarded.

(c) In *Zulsafari Ab Ghani & Anor v. Shahril Idris* [2002] 3 CLJ 187, RM190,800 was awarded for complete paraplegia.

(d) In *Cheng Siak Hor & Anor v. Rozali Ahmad* [2002] 4 CLJ 223, RM150,000 was awarded for complete paraplegia.

(e) In *Mohd Amiruddin bin Kamurudin & Another v. Fazilah bt Abdul & Another* [2008] 1 PIR 35, RM160,000 was awarded for complete paraplegia below the waist.

[20] Thus the argument of the Senior Federal Counsel is that even RM300,000 for pain and suffering and loss of amenities in the instant case is high as the assessment should have been based on precedents circa 2001. He also pointed out that the plaintiff in *Syarizan Sudirmin & Ors v. Abdul Rahman Bukit & Anor (supra)* was in a worse position than the instant plaintiff as he was rendered paralysed waist below. The principal permanent disabilities of the plaintiff in the instant case are cognitive impairment, visual field loss and organic personality disorder. The summary that he extracted from the medical report on the plaintiff by the defendants' panel of experts is as follows:

(i) Impaired cognitive function:

– verbal functioning impairment including writing, repeating, verbal memory, verbal calculation and ability to understand sentences.

(ii) Personality change:

- psychiatric condition of "Organic Personality Disorder" (ICD-10).
- decreased ability to comprehend complex written words and to write down his thoughts.
- irritability and depression from time to time.
- previous suicidal thoughts and hyper vigilance and excessive fear following the attack.

(iii) Permanent visual field defect on his right side (right Homonymous Hemianopia).

(iv) Bilateral moderate sensorineural hearing impairment.

(v) Scarring which is not significantly increasing in size and does not have any bearing on the Plaintiff's life span.

[21] Although, the Senior Federal Counsel was of the view that precedents circa 2001 should have used by the Deputy Registrar, he was agreeable to a global award of RM300,000 for pain and suffering and loss of amenities. In my view, there is merit in the submission of the Senior Federal Counsel. The learned Deputy Registrar in this case, had applied recent precedents in assessing general damages for pain and suffering although 14 years had elapsed since the time of the shooting. As I said earlier, any drop in money value would have been compensated by the 8% interest per annum from the time of service of the writ. I agree with counsel for the plaintiff that the plaintiff had led an active life with numerous outdoor sporting interests such as yachting and therefore his present condition should be particularly distressing to him. However, awards for general damages has to be based on awards in previous cases involving similar injuries (see *Sam Wan Hoon v. Kader Ibramsah* [1981] 1 MLJ 295). Furthermore, in the instant case, all the permanent injuries that the plaintiff suffers now are all related to the brain injury. In the premises, a global award is more appropriate than separate awards. Taking *Syarizan Sudirmin & Ors v. Abdul Rahman Bukit & Anor (supra)* as a guide, in my view, RM300,000 is reasonable. I agree with the Senior Federal Counsel that the plaintiff was worse off in that case. That being the case, in 1999 or 2001, an award of RM300,000 can even be considered generous for the injuries suffered by the

plaintiff. As the assessment of the Deputy Registrar should have been made based on precedents between the date of service of the writ and the date of judgment only, ie, 8th March 2001, I am minded to reduce his award of RM500,000 to RM300,000.

Exemplary Damages

[22] The learned Deputy Registrar when pronouncing judgment on 28 April 2013, said that he granted RM500,000 as general damages for pain and suffering and loss of amenities and RM250,000 as exemplary damages. However, in his written grounds dated 13 May 2013, it is stated that the award for general damages for pain and suffering is RM750,000. However, the written grounds makes no mention of the award of RM250,000 for exemplary damages. It is obvious that the learned Deputy Registrar made an error in his grounds of decision. In any event, the relevant binding judgment is the judgment pronounced on 28 April 2013. Counsel for the plaintiff has not appealed against the award of RM250,000. However, the defendants have appealed against the said award as being excessive. The learned Senior Federal Counsel submitted that RM50,000 which was granted in *Syarizan*'s case is more reasonable. The nature of exemplary damages is that it is not compensatory damages but that it is punitive damages. As stated by VT Singham J in *Syarizan Sudirmin & Ors v. Abdul Rahman Bukit & Anor (supra)*, it is to express the court's disapproval. Since the case of *Rookes v. Barnard* [1964] AC 1129, it is generally accepted that exemplary damages are limited to three situations:

(1) in the case of oppressive, arbitrary or unconstitutional actions by government servants;

(2) where the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff;

(3) where statute expressly authorised it.

[23] In the instant case, the claim for exemplary damages obviously falls under the first category. Learned Senior Federal Counsel argued based on the case of *Templeton & Ors v. Low Yat Holdings Sdn Bhd & Anor* [1992] 1 LNS 7; [1993] 1 MLJ 443 that the exemplary damages should be limited to 25% of the

compensatory damages. In other cases, higher exemplary damages have been awarded. However, there is no fixed formula for awarding exemplary damages (per Mokhtar Sidin JCA in *Sin Heap Lee-Marubeni Sdn Bhd v. Yip Shou Shan* [2004] 4 CLJ 35; [2005] 1 MLJ 515). Another principle that must be considered in assessing exemplary damages is whether the compensatory damages that were awarded are adequate. In *Chong Siew Chiang v. Chua Ching Geh & Anor* [1995] 1 CLJ 173; [1995] 1 MLJ 551 Richard Malanjum J (as His Lordship then was) said as follows:

> Restraint should be exercised in assessing exemplary damages. ... Before considering any exemplary damages it must be considered first whether the sum in mind for compensatory damages would be adequate. If it is not, in view of the outrageous conduct of the defendant and to indicate disapproval of such conduct and as a deterrence, an additional sum may be added to bring the sum sufficient as punishment.

[24] The learned Deputy Registrar gave no reason for awarding RM250,000 as exemplary damages. In *Syarizan Sudirmin & Ors v. Abdul Rahman Bukit & Anor (supra)*, only RM50,000 was awarded. In that case, the first defendant had kicked the plaintiff off his motorcycle. In the instant case, the first defendant had fired three shots at the plaintiff. However, in my view, RM250,000 is unjustified as the plaintiff has already been awarded RM300,000 for pain and suffering and loss of amenities. I shall therefore reduce the award for exemplary damages from RM250,000 to RM100,000. The said award shall bear post judgment interest of 5% from 28 February 2013.

Aggravated Damages

[25] Learned counsel for the plaintiff submitted that the Deputy Registrar should have also awarded aggravated damages. The reason for the aggravated damages relates to the alleged misconduct of the Deputy Public Prosecutor in preferring a lighter charge against the first defendant and misrepresenting the true facts of the case in the criminal court. However, the learned Senior Federal Counsel has correctly pointed out that this court is precluded from considering an award for aggravated damages because the plaintiff did not appeal against the decision of the Deputy Registrar in respect of the same. As I agree with this argument, I shall not delve into the merits of the submission of counsel for the plaintiff in respect of appropriateness of exemplary damages in this case.

Pre-trial And Post-trial Cost Of Nursing Care

[26] The learned Deputy Registrar awarded pre-trial nursing care expenses in the sum of RM106,800. The period of pre-trial nursing care was between the date of incident, ie, 26 February 1996 to the conclusion of the assessment hearing, ie, 2010 which is 178 months after rounding off. The multiplicand that he used, ie, the cost of a hiring a caregiver on a monthly basis is RM600. As for post trial or future costs of nursing care, the Deputy Registrar awarded £46,400 at the rate of 8% per annum from January 2001 to the date of full payment. The multiplicand he used was £800 as the plaintiff produced evidence that trained caregivers in the United Kingdom would charge around that rate per week. The multiplier that the Deputy Registrar used was four years and ten months (58 months in total). He presumably took into account the statutory multiplier under s. 28 of the Civil Law Act 1956 as submitted by the Senior Federal Counsel. He did not give his reason for using the multiplier of 58 months.

[27] The learned Senior Federal Counsel submitted the following grounds to question the decision of Deputy Registrar:

(i) there was no direct evidence in respect of the life expectancy of the plaintiff.

(ii) therefore the statutory multiplier should have been applied for both pre-trial and future cost of nursing care.

(iii) the assessment should have been based on the period between the service of the writ and date of judgment which is 8 March 2001.

(iv) alternatively, the common law approach should have been adopted and by which method, the plaintiff would no longer be entitled to future costs of care.

(v) Interest for future nursing care should not have been awarded.

[28] The plaintiff tendered evidence in the form of a printout from the CIA website that 25 states that the life expectancy of a United Kingdom male is 79 years old. The Senior Federal Counsel submitted that the printout from the CIA (Central Intelligence Agency of the United States of America) website is not evidence and that the court cannot take judicial notice of it. Therefore, he

suggested that, in the alternative, the statutory multiplier in s. 28 of the Civil Law Act should be adopted for both the pre-trial and post-trial cost of care. It must be noted that the statutory multiplier is for the purpose of assessing loss of earnings and that is the reason the working age in the statutory multiplier is restricted to 55 years. The plaintiff was already 45 years old at the time of the incident and therefore any award for future nursing care using the statutory multiplier would not take into account the fact that the plaintiff would live well beyond 55 years. In fact at the conclusion of the assessment hearing, the plaintiff was already 60 years old. Using the statutory multiplier only for both pre-trial and post-trial costs of nursing care, learned Senior Federal Counsel submitted the multiplier should be 58 months based on the retirement age of 55 years. He submitted that monthly cost of nursing care of RM500 is sufficient as the plaintiff was not in a vegetative state. Therefore, the total award for pre-trial and post-trial costs of care should only be RM29,000. Alternatively, he submitted that if the common law base age of 65 is adopted for use in the multiplier, the plaintiff is entitled to the total award of RM84,000. The calculation is as follows:

Pre-trial nursing care : RM500.00 x 12 months x 3 years = RM18,000.00

Post-trial nursing care : RM500.00 x 12 months x 11 years = RM66,000.00

Total amount : RM18,000.00 + RM66,000.00 = RM84,000.00

[29] Finally, Senior Federal Counsel also submitted that no interest for future nursing case should be awarded.

[30] On the other hand, counsel for the plaintiff submitted that the plaintiff should be awarded £800 per week from date of conclusion of the assessment trial until the plaintiff reaches the age of 79 which is about RM3,501,913 after currency conversion at the rate of 4.95. She urged the court to take judicial notice of the CIA website information. She submitted that the United Kingdom costs of hiring a trained care giver for the plaintiff has not been rebutted by the defendants.

[31] Although the Deputy Registrar did not give reasons, he found that the plaintiff required a caregiver as his head injuries were extensive. Following a period of convalescence after the shooting incident, the plaintiff resigned from his job as a Yacht

Maintenance Specialist cum Marina Manager in Kota Kinabalu. He went to resume work in Brunei until September of 2010. However, evidence was tendered by him that he required to be looked after even though he resumed working. His caregiver during this period was his wife. It is apparent that the Deputy Registrar accepted the evidence of the plaintiff, his wife and the medical specialists on this point because he awarded pre-trial nursing care costs. Malaysian courts have adopted the decision in *Cunningham v. Harrison* [1973] 1 QB 942 that care provided by a relative or spouse must be rewarded with monetary compensation (see *Liong Thoo v. Sawiyah Hj Sirat & Ors* [1981] CLJ 126; [1981] CLJ (Rep) 171; [1982] 1 MLJ 286, *Ahmad Daman Huri bin Hussein v. Koo Chin Yau* [1990] 1 CLJ 747; [1990] 1 CLJ (Rep) 568; [1990] 3 MLJ 53 and *Marappan & Anor v. Siti Rahmah bte Ibrahim (supra)*). In the instant case, the learned Senior Federal Counsel did not dispute that the plaintiff needed the services of a caregiver after the trial. He also did not dispute that his wife looked after him and ought to be compensated. However, he disputed the quantum (multiplicand), the time period (multiplier) and the interest rate in respect of the award for pre-trial and future costs of nursing care. I shall now consider the issues in respect of the cost of nursing care that have been raised by the parties.

[32] In respect of life expectancy, I agree with the Senior Federal Counsel that the court cannot take judicial notice of the said printout from the CIA website. The plaintiff should have given evidence through the medical witnesses who had testified on his behalf. However, that does not mean that the court should ignore the fact that the plaintiff requires a certain level of nursing care and would live beyond retirement age. In fact, as I noted earlier, by the time of the assessment hearing he had retired from working at the age of 60. This does not mean that there should be no award for future nursing care merely because the information from the CIA website is not admissible. In some local cases, the court had accepted evidence from the Malaysian Statistics Department in respect of the life expectancy. In the case of *Muhamad Ayub Zulkifli v. Zolazree Zolkeflee & Anor* [2011] 1 LNS 1428, the court accepted that the life expectancy of a Malaysian male is around 72 years. Gunalan JC in the above mentioned case said as follows:

> Based on the trend of decisions, it would appear that the proper approach would be to take the current average life expectancy in calculating the correct multiplier. I, therefore, upheld the contention of the appellant that the learned SCJ had erred in principle in deciding that the life expectancy of P1 was around 65 years based on authorities that were no longer relevant on this issue. I held that the suggested figure of 72 years was a correct estimate in the present times.

[33] In *Bujang Mat & Anor v. Lai Tzen Hai & Anor* [2004] 4 CLJ 127; [2004] 6 MLJ 376, the court accepted that the life expectancy of Malaysian male at that time was 69 years old.

[34] In the instant case, Senior Federal Counsel submitted that bullet fragments are still lodged inside the brain of the plaintiff and that his life expectancy is substantially reduced. He also submitted that the plaintiff did not tender evidence to the contrary. In my view, there is no merit in this submission. The medical evidence tendered was to the effect that the brain scarring would not affect life expectancy.

[35] Therefore, since there is no direct evidence to the effect that the life expectancy of the plaintiff would be significantly shortened, there is no basis to accept the submission of the Senior Federal Counsel on this point. The defendants should have tendered evidence that the life expectancy of the plaintiff had been reduced if they wanted to pursue this point. After all, the plaintiff was also examined by a panel of medical experts of the defendants. In the absence of admissible evidence in respect of the life expectancy of a United Kingdom male, my view is that at least the present Malaysian male life expectancy of 72 years should be used to calculate the multiplier. It is also my view that the statutory multiplier in s. 28 of the Civil Law Act would severely limit the award for costs of future nursing case as it is meant to calculate loss of earnings only.

[36] In respect of the multiplicand, the Senior Federal Counsel had submitted that RM500 is reasonable as the plaintiff was still able to work despite serious injuries and that he is not in a vegetative state. It is entire possible that in Malaysia, one can hire a domestic helper for a far modest amount than £800 per week. The learned Deputy Registrar fixed the multiplicand at RM600 per month for pre-trial cost of care. However, counsel for the plaintiff submitted that the plaintiff who is a United Kingdom citizen would

be returning to Scotland and the cost of hiring a trained care giver is at least £800 per week. The learned Deputy Registrar allowed £800 per week but he fixed the multiplier at 58 months. In my view, £800 per week is unjustified for the following reasons. The first reason is that, as submitted by the Senior Federal Counsel, the plaintiff in the instant case, despite sustaining serious injuries, had not been reduced to "vegetative state" or even a "wheel chair existence". He had still managed to work after the incident with the assistance of his wife for few years. My second reason is that the plaintiff had elected to live and work in Malaysia at the material time. Therefore any award, including an award for costs of nursing care, should be based on local rates. Otherwise, damages that are not foreseeable would be awarded. The Deputy Registrar found that RM600 a month is reasonable for pre-trial care that was rendered by the wife of the plaintiff. In cases where the victim had sustained far more serious injuries than the instant plaintiff, courts have only awarded around RM750 a month. However, it is indisputable that the plaintiff had suffered serious brain injury in this case. Five specialists called by the plaintiff gave evidence that the plaintiff would continue to suffer intellectual impairment indefinitely. I therefore find that RM600 a month is reasonable for future nursing care as well. For the pre-trial cost of nursing care, ie, between the time of the incident and the conclusion of the assessment hearing, the Deputy Registrar awarded RM106,800 based on the multiplier of 178 months. The learned Senior Federal opined that RM500 is more reasonable. The Senior Federal Counsel also submitted that the pre-trial costs of care should be assessed between the service of the writ and date of judgment which is 8 March 2001. In my view, the date of 8 March 2001, would not make any difference to the calculation as I find that the plaintiff is entitled to costs of nursing care until the age of 72. Therefore, I shall uphold the Deputy Registrar's decision to grant pre-trial costs of nursing care in the sum of RM106,800 at 8% per annum from the date of service of the writ to 8 March 2001 and statutory interest of 8% per annum from 8 March 2001 to date of payment. The appeal of the defendants on the said award is therefore dismissed.

[37] In respect of cost of future nursing costs, I shall award RM86,400 with post judgment interest of 5% per annum from 28 February 2013 until full payment. This is based on the multiplier of 12 years and the multiplicand of RM600 per month.

The multiplier is calculated from December 2010 when the assessment trial concluded until the age of life expectancy of 72 years. However, in my view the future nursing care award of RM86,400 should not carry interest from the date of service of the writ because nursing care costs that would be incurred in the future are claimable immediately. The decision of the Deputy Registrar in respect of future cost of nursing care is therefore varied to the above extent.

Claim For Special Damages Of RM14,311.66

[38] In para. 2 of the judgment dated 8 March 2001, the court granted special damages under para. 12 of the amended statement of claim in the sum of RM149,423.35. However, during the assessment hearing, the plaintiff claimed a further RM14,311.66 which were incurred as medical expenses after 8 March 2001. The receipts to support these expenses were produced by the plaintiff. However, the learned Deputy Registrar did not make any award under this head of special damages for the reason that it had already been "settled". He made this statement because the special damages award in the sum of RM149,423.35 in the judgment dated 8 March 2001 had already been paid to the plaintiff. The learned Senior Federal Counsel submitted that special damages in the sum of RM14,311.66 cannot be awarded because they do not fall under prayers (2) and (4) of the judgment dated 8 March 2001. He further submitted that special damages must be pleaded and particularised in the pleadings. Prayers (2) and (4) in the said order refer to the special damages that were pleaded under para. 12 in the sum of RM149,423.35. These special damages were granted by the court and were fully paid. In my view, there is merit in the argument of the Senior Federal Counsel. It is trite law that special damages must be particularised and pleaded. In the instant case, assessment of damages was only ordered in respect of general damages. I shall therefore dismiss the appeal of the plaintiff in respect of the decision of the Deputy Registrar not to grant further special damages of RM14,311.66.

Conclusion

[39] In conclusion, I have made the following orders:

(a) I shall reduce the award of the Deputy Registrar in respect of the award for pain and suffering and loss of amenities from RM500,000 to RM300,000. The said award shall carry interest of 8% per annum from date of service of writ to full payment.

A (b) I shall reduce the award for exemplary damages from RM250,000 to RM100,000. The said award shall bear post judgment interest of 5% per annum from 28 February 2013 to full payment.

B (c) In respect of pre-trial nursing care, I shall affirm the decision of the Deputy Registrar to award RM106,800 at 8% per annum from the date of service of the writ to 8 March 2001 and statutory interest on RM106,800 at 8% per annum from 8 March 2001 to date of payment.

C (d) In respect of cost of future nursing costs, I shall reduce the award of the Deputy Registrar from £46,400 to RM86,400. There shall be post judgment interest of 5% per annum from 28 February 2013 until full payment.

D (e) I shall affirm the decision of the Deputy Registrar not to award special damages of RM14,311.66.

(f) I shall affirm the decision of the Deputy Registrar not to grant damages for loss of earning capacity.

E (g) I shall affirm the award of RM60,000 at the rate of 8% per annum from the date of service of the writ to 8 March 2001 in respect of general damages for future medical expenses.

(h) I shall affirm the order of costs made by the Deputy Registrar.
F As the parties partially succeeded in this appeal, I make no order of costs in respect of the appeal to judge in chambers.

[40] As the parties partially succeeded in this appeal, I make no order of costs in respect of the appeal to judge in chambers.

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